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12 DISTRICT NO. 40

13 SUPERIOR COURT OF THE STATE OF CALIFORNIA

14 COUNTY OF LOS ANGELES
15

16 Coordination Proceeding
17 Special Title (Rule 1550 (b))

Judicial Council Coordination
Proceeding No. 4408

18 **ANTELOPE VALLEY GROUNDWATER
19 CASES**

20 Included Actions:

21 Los Angeles County Waterworks District No.
22 40 v. Diamond Farming Co.
Superior Court of California
County of Los Angeles, Case No. BC 325 201

23 Los Angeles County Waterworks District No.
24 40 v. Diamond Farming Co.
Superior Court of California, County of Kern,
Case No. S-1500-CV-254-348

25 Wm. Bolthouse Farms, Inc. v. City of Lancaster
26 Diamond Farming Co. v. City of Lancaster
Diamond Farming Co. v. Palmdale Water Dist.
27 Superior Court of California, County of
Riverside, consolidated actions, Case Nos.
28 RIC 353 840, RIC 344 436, RIC 344 668

LOS ANGELES COUNTY
WATERWORKS DISTRICT NO. 40'S
OPPOSITION TO DIAMOND FARMING
COMPANY'S MOTION TO STRIKE

Hearing:

Date: December 2, 2005
Time: 10:00 a.m.
Dept.: 1

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION.

Diamond Farming's Motion to Strike should be denied because:

- The Complaints seek an adjudication of all rights and interests to the Basin while Diamond Farming's action seeks only limited redress as to its water rights, and thus, the two actions are different and not duplicative.
- The Motion to Strike is inconsistent with Diamond Farming's pleadings before the Riverside County Superior Court as to whether the County's claims are compulsory cross-claims; and the doctrine of judicial estoppel requires denial of Diamond Farming's Motion.
- County Waterworks District No. 40 filed the Complaint pursuant to an Order by the Riverside County Superior Court, an action that Diamond Farming itself requested before the Riverside Court.

II. FACTS.

This action is to adjudicate groundwater rights within the Antelope Valley Groundwater Basin to stabilize and preserve the water supply in the Basin. Other pending actions, as detailed below, seek only limited redress for individual interests.

In 1999 and in 2000, Diamond Farming Company filed quiet title actions and named only a few public entities that provide public water service. (See, Exhibits "A," "B," and "C" to Diamond Farming's Request for Judicial Notice.) Both Diamond Farming and Wm. Bolthouse Farms, Inc., sought judgments that their right to pump groundwater is superior to the public

1 agencies' needs and rights to provide water to the public. (*Ibid.*)

2 On November 12, 2004, the County filed a Motion for Leave to File a Cross-Complaint in
3 the above consolidated actions of Diamond Farming and Wm. Bolthouse Farms, Inc. (Diamond
4 Farming's RJN, Exhibit "F.") Diamond Farming filed an opposition (County's RJN, Exhibit "2")
5 and stated at the hearing that it did not intend to later argue that the County's cross-complaint was
6 a compulsory cross-complaint. (County's RJN, Exhibit "2", p. 4:14-15.) The Court denied the
7 motion and ordered the County to file separate actions in Kern County, Los Angeles County, and
8 submit a petition to the State Judicial Council to coordinate the actions. (County's RJN, Exhibit
9 "2", p. 31, lns. 14-28 – p. 32, lns. 1-11.)

10 On November 29, 2004, the County filed *Los Angeles County Waterworks District v.*
11 *Diamond Farming Co., et al.*, Los Angeles County Superior Court Case No. BC 325201.
12 (County's RJN, Exhibit "3.") On December 1, 2004, the County filed this action. (County's
13 RJN, Exhibit "5.") These two actions are general groundwater rights adjudications. (County's
14 RJN, Exhibits "3" and "4.")

15 On January 3, 2005, the County submitted a Petition for Coordination to the State Judicial
16 Council. (County's RJN, Exhibit "5") The Judicial Council appointed the Honorable David C.
17 Valesquez, Judge of the Orange County Superior Court, and he ordered the Diamond Farming
18 actions and the Groundwater Adjudication actions coordinated on June 17, 2005. (County's RJN,
19 Exhibit "6.")

20
21 **III. ARGUMENT.**

22
23 **A. DIAMOND FARMING PROVIDES NO AUTHORITY FOR ITS**
24 **ARGUMENT THAT THE COUNTY'S COMPLAINTS MUST**
25 **BE STRICKEN AS "IRRELEVANT," REDUNDANT" OR**
26 **"DUPLICATIVE".**
27

28 Diamond Farming bases its Motion to Strike on Code of Civil Procedure Section 436,
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1 which provides

2
3 The court may, upon a motion . . . , or at any time in its discretion, and upon terms it deems
4 proper:

5 (a) Strike out any irrelevant, false, or improper matter inserted in any pleading.

6 (b) Strike out all or any part of any pleading not drawn or filed in conformity with
7 the laws of this state, a court rule, or an order of the court.

8
9 However, Diamond Farming provides no legal authority in Section 436 or otherwise, for
10 the Court to strike the County's Complaints as "irrelevant," "redundant," or "duplicative."
11 Diamond Farming merely relies on its own allegations in other cases, *i.e.*, the Diamond Farming
12 action, to support its argument. By way of this argument, Diamond Farming does nothing but
13 confuse the issues since the County's actions and Diamond Farming's action differ in their scope
14 and requested relief.

15 Diamond Farming incorrectly suggests that the County's actions and Diamond Farming's
16 1999 action are sufficiently similar such that the County's allegations are "redundant and
17 duplicative." The County seeks a basin-wide adjudication of all groundwater rights that seek
18 declaratory and injunctive relief on numerous grounds, as well as *inter-se* adjudication of the
19 water rights of potentially thousands of parties. Diamond Farming by way of its Complaint seeks
20 to quiet title only as to its water rights *vis-à-vis* the County and a few public water suppliers. A
21 judgment in the Diamond Farming Riverside action would not be *res judicata* here because the
22 judgment would not dispose of the County's cause of action for municipal water service priority,
23 declaration of the County's right to store water in the Basin, request for a physical solution to
24 Basin water shortages and overdraft conditions, and a declaration of the County's right to capture
25 return flows from imported water. Accordingly, there is no factual or legal support for Diamond
26 Farming's argument that the County's adjudication proceedings are so similar to Diamond
27 Farming's action that the Court must strike the County's operative pleadings as irrelevant,
28 redundant or duplicative.

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1 **B. DIAMOND FARMING IS ESTOPPED FROM ARGUING THAT**
2 **MATTERS RAISED IN THE COUNTY’S COMPLAINTS**
3 **SHOULD HAVE BEEN FILED AS A COMPULSORY CROSS-**
4 **COMPLAINT IN THE RIVERSIDE ACTION SINCE**
5 **DIAMOND FARMING ARGUED THE COUNTY SHOULD**
6 **FILE A SEPARATE ACTION.**

7
8 Judicial estoppel prevents a party from asserting a position in one legal proceeding that is
9 contrary to a position previously taken in another earlier proceeding. Judicial estoppel protects
10 the integrity of the judicial process: Judicial estoppel is “intended to protect against a litigant
11 playing ‘fast and loose with the courts.’” (*Russell v. Rolfs* (9th Cir. 1990) 893 F.2d 1033, 1037.)

12 A five-part test determines when the doctrine applies: (1) the same party has taken two
13 positions; (2) the positions were taken in judicial or quasi-judicial administrative proceedings; (3)
14 the party was successful in asserting the first position (i.e., the tribunal adopted the position or
15 accepted it as true); (4) the two positions are totally inconsistent; and (5) the first position was not
16 taken as a result of ignorance, fraud, or mistake. (*Jackson v. County of Los Angeles* (1997) 60
17 Cal.App.4th 171, 183.)

18 Here, Diamond Farming takes conflicting positions on whether the County’s groundwater
19 adjudication actions should have been raised by a compulsory cross-complaint in the Diamond
20 Farming action. In the Diamond Farming action, the County filed a Motion for Leave to File a
21 Cross-Complaint, but Diamond Farming opposed that motion and argued the County “should file
22 a separate action,” and that the proposed cross-complaint was “unnecessary” to litigate the issues
23 between the parties in the Riverside Action. (County’s RJN Exhibit “1,” pp. 9-10, 13-15.). At
24 the November 12, 2004 hearing on the County’s motion, the court asked Diamond Farming if it
25 intended to later argue that such a new complaint should have instead been filed as a cross-
26 complaint in the Diamond Farming Action. Counsel for Diamond Farming, Mr. Bob Joyce,
27 replied: “I don’t think it’s a compulsory cross-complaint at all. I think that’s a bit of a red
28 herring.” (County’s RJN Exh. “2,” p. 4:14-15.) Thus, Diamond Farming is estopped from

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1 arguing now that the proposed cross-complaint was compulsory and that the Complaint should be
2 stricken.

3
4 **C. IN DENYING THE COUNTY'S MOTION FOR LEAVE TO**
5 **FILE A CROSS-COMPLAINT TO ADJUDICATE THE BASIN,**
6 **THE COURT IN THE DIAMOND FARMING ACTION RULED**
7 **THAT THE COUNTY MUST FILE SEPARATE**
8 **ADJUDICATION ACTIONS AND SEEK JUDICIAL COUNCIL**
9 **COORDINATION.**
10

11 When the Riverside County Superior Court denied the County's motion for leave to file a
12 cross-complaint, that court directed the County to file adjudication actions in Kern County and
13 Los Angeles County, and petition the Judicial Council to coordinate those actions with the
14 Diamond Farming and Bolthouse actions. (County's RJN, Exhibit "2," p. 31, Ins. 14-28 – p. 32,
15 Ins. 1-11.). The County shortly thereafter filed adjudication complaints in Kern County and Los
16 Angeles County and submitted a Petition for Coordination to the Judicial Council. (County's
17 RJN, Exhibits 3-5.) Although counsel for Diamond Farming was present when the Court issued
18 this order (County's RJN, Exhibit "2," p. 1), the Motion to Strike fails to disclose this order.

19 Because Diamond Farming now takes a conflicting position and argues that the cross-
20 complaint was compulsory in nature, Diamond Farming take inconsistent positions in separate
21 judicial proceedings after it was successful in asserting the first position.¹ Because Diamond
22 Farming does not claim its previous position was the result of its ignorance, fraud, or mistake, the
23 elements of judicial estoppel are met and the Court should deny the Motion to Strike.

24
25
26
27 ¹ Moreover, Diamond Farming should also be equitably estopped from changing its position now because the County
28 will be prejudiced if the Court grants this Motion to Strike. (See e.g., *Jackson v. County of Los Angeles*, supra, 60
Cal.App.4th at 183.)
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1 IV. CONCLUSION.

2
3 The County respectfully requests that the Court deny the Motion to Strike since there is no
4 factual or legal support to strike the County's Complaints as irrelevant, redundant or duplicative,
5 especially when the adjudication proceedings and the Diamond Farming action are vastly
6 different in their scope. Additionally, judicial and equitable estoppel estop Diamond Farming
7 from raising inconsistent positions in these actions, especially when the County filed this action
8 under an order by the Riverside County Superior Court, and petitioned to coordinate the cases as
9 ordered.

10
11
12 Dated: November 17, 2005

BEST BEST & KRIEGER LLP

13
14 By: 

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PROOF OF SERVICE

I, Kerry V. Keefe, declare:

I am a resident of the State of California and over the age of eighteen years, and not a party to the within action; my business address is Best Best & Krieger LLP, 5 Park Plaza, Suite 1500, Irvine, California 92614. On November 17, 2005, I served the within document(s):

LOS ANGELES COUNTY WATERWORKS DISTRICT NO.
40'S OPPOSITION TO DIAMOND FARMING COMPANY'S
MOTION TO STRIKE

- ☐ by transmitting via facsimile the document(s) listed above to the fax number(s) set forth below on this date before 5:00 p.m.
- ☒ by placing the document(s) listed above in a sealed envelope with postage thereon fully prepaid, in the United States mail at Irvine, California addressed as set forth below.
- ☐ by causing personal delivery by ASAP Corporate Services of the document(s) listed above to the person(s) at the address(es) set forth below.
- ☐ by personally delivering the document(s) listed above to the person(s) at the address(es) set forth below.
- ☒ I caused such envelope to be delivered via overnight delivery addressed as indicated on the attached service list. Such envelope was deposited for delivery by Federal Express following the firm's ordinary business practices.**

(SEE ATTACHED SERVICE LIST)

I am readily familiar with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on November 17, 2005 at Irvine, California.


Kerry V. Keefe

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